

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
JAMES EDWARD LUEDTKE,)	CASE NO. 08-21611 JPK
)	Chapter 13
Debtor.)	
*****)	
FALK PLI ENGINEERING AND)	
SURVEY, INC.,)	
Plaintiff,)	
v.)	ADVERSARY NO. 08-2099
JAMES EDWARD LUEDTKE,)	
Defendant.)	

ORDER REGARDING FURTHER PROCEEDINGS

This adversary proceeding came before the Court for telephonic preliminary pre-trial conference on October 22, 2008. The plaintiff appears by counsel Carina M. De la Torre; the defendant appears by counsel David Dabertin.

Attorney de la Torre states that the plaintiff contemplates the potential filing of a motion for summary judgment, based upon the doctrine of collateral estoppel arising from a judgment entered in cause number 64D02-0306-CT-4819 in the Porter County, Indiana Superior Court. The manner in which collateral estoppel is to be determined, under Indiana law, was stated as follows in *Segovia v. State of Indiana*, Ind. App., 666 N.E.2d 105, 107 (1996):

In order to apply the doctrine of collateral estoppel, the court must engage in a two step analysis: "(1) determine what the first judgment decided; and (2) examine how that determination bears on the second case." *Webb v. State*, 453 N.E.2d 180, 183 (Ind.1983), *reh. denied, cert. denied*, 465 U.S. 1081, 104 S.Ct. 1449, 79 L.Ed.2d 767 (1984) (citing *United States v. Mespouledé*, 597 F.2d 329 (2d Cir.1979)). Determining what the first judgment decided involves an examination of the record of the prior proceedings including the pleadings, evidence, charge and any other relevant matters. *Id.* at 184. The court must then decide whether a reasonable jury could have based its verdict upon any factor other than the factor of which the defendant seeks to foreclose consideration. *Id.* If the jury could have based its decision on another factor, then collateral estoppel does not bar relitigation. *Id.*

IT IS ORDERED that, to seek to determine whether obtaining a transcript of the trial is a

worthwhile exercise, by **December 10, 2008**, the plaintiff shall file with the court and provide a copy to defendant's counsel – exemplified copies of the following documents from the foregoing case:

1. All pleadings;
2. The final pre-trial order (if any), and any modifications thereto;
3. The instructions given to the jury;
4. The jury's verdict;
5. Any judgment entered by the trial court following the conclusion of trial of the case;
6. Any interlocutory orders resolving any case issues prior to the trial.

At the next scheduled conference, the court will review with the parties the extent to which it may be feasible to submit this case to the court based upon principles of collateral estoppel. The parties are advised that the elements necessary to establish the contentions of the plaintiff in this adversary proceeding are probably different than those upon which the state court proceeding was determined. The elements of 11 U.S.C. § 523(a)(2)(A) which will control this adversary proceeding are those stated in *In re Hostetter*, 320 B.R. 674 (Bankr. N.D.Ind. 2005), and the elements with respect to 11 U.S.C. § 523(a)(4) are stated in the court's order entered on October 18, 2006 (record entry #29) in *Davis v. Karner*, adversary proceeding number 05-6108.

IT IS FURTHER ORDERED that a telephonic preliminary pre-trial conference will be held on **December 17, 2008, at 11:00 A.M.** in order to determine the course of further proceedings in this case.

Dated at Hammond, Indiana on November 4, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorneys of Record